

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Executive Committee
<b>Date of Meeting:</b>	7 June 2023
<b>Subject:</b>	Response to the Technical Consultation on the Infrastructure Levy 2023
<b>Report of:</b>	CIL Manager and Planning Policy Manager
<b>Head of Service/Director:</b>	Head of Development Services
<b>Lead Member:</b>	Lead Member for Built Environment
<b>Number of Appendices:</b>	One

**Executive Summary:**

In March 2023 the government published, for consultation, a proposed reform to the existing system of developer contributions – Section 106 planning obligations and the Community Infrastructure Levy – in England. It sets out a number of proposed changes to the current system.

The changes are designed to supplement the legislative changes effecting planning reform currently emerging through the Levelling Up and Regeneration Bill (LURB), which itself is expected to receive Royal Assent this year.

The consultation responses to the Department for Levelling Up Housing and Communities (DLUHC) will inform the preparation and content of changes to regulations, which will themselves be consulted on further, should the LURB receive Royal Assent this year.

The government wants to reform the current system to make sure that local authorities receive a fairer contribution from the money that typically accrues to landowners and developers. Increasing this contribution would provide the much-needed funding for infrastructure that results from development, such as: Affordable housing; schools; GP surgeries; green spaces; and transport infrastructure to support connectivity. The overall aim of the proposed reforms is to change the way in which contributions for infrastructure are collected to become a mandatory, more streamlined system.

The proposed Infrastructure Levy intends to create a more efficient system by removing the negotiation of some Section 106 planning obligations (“s106”) and, in so doing, increasing transparency as Levy charging schedules will make the expected value of a contribution clear up-front. It will also help to provide clarity to existing and new residents what new infrastructure will accompany development; and to developers what infrastructure will be required to make development acceptable. The Government intends to create a more consistent system, which synchronises infrastructure delivery with development delivery.

As part of the consultation, a set of 45 specific questions have been published.

The consultation sets out proposals that would have an impact on the way in which developer contributions are calculated and collected in Tewkesbury Borough. It is therefore important that a response is made to these proposals. Recommended responses from Tewkesbury Borough Council to each of these questions is set out in Appendix 1 to this report.

However, as set out in the main body of the report, there are some key proposed changes and overarching concerns which relate to the lack of clarity and detail contained within the proposals and the assumption of risk through borrowing by local authorities. As such officers would recommend the suggested formal response to the 45 questions be preceded by appropriate text setting out more general key concerns.

The deadline for responding to this consultation is Thursday 9th June 2023.

**Recommendation:**

- 1. That the proposed responses to the Technical Consultation on the Infrastructure Levy, set out in Paragraph 3.3 of this report and at Appendix 1, are APPROVED by the Executive Committee to be formally submitted as Tewkesbury Borough Council's response to the consultation.**
- 2. That authority is delegated to the Head of Development Services, in consultation with the Lead Member for Built Environment, to make any necessary minor amendments to the response prior to submission.**

**Financial Implications:**

No direct impacts at this stage, but proposals in the consultation could lead to further changes in legislation and regulation which will have financial implications.

**Legal Implications:**

No direct impacts at this stage, but proposals in the consultation could lead to further changes in legislation and regulation that will require further consideration when consulted upon.

**Environmental and Sustainability Implications:**

No direct impacts at this stage, but proposals in the consultation could lead to further changes in legislation which will have an impact on Environmental and Sustainability outcomes.

**Resource Implications (including impact on equalities):**

No direct impacts at this stage, but proposals in the consultation could lead to further changes in legislation which place additional requirements on the Council and have resource implications, particularly regarding officer time. An Equality Impact Assessment is not required at this stage.

**Safeguarding Implications:**

None.

**Impact on the Customer:**

None.

## 1.0 INTRODUCTION

1.1 The government has for some time been reviewing how the planning system should be improved in England to boost housebuilding, provide supporting infrastructure, and ensure communities have a stronger say in where homes are built and what they will look like.

1.2 The Secretary of State published a Written Ministerial Statement on 6 December 2022, stating that a new National Planning Policy Framework (NPPF) “Prospectus” was to be published, which would be followed by a number of related consultations to complement measures being introduced through the new Levelling Up and Regeneration Bill (LURB), including the introduction of a National Infrastructure Levy.

1.3 Accordingly, the Technical Consultation on the Infrastructure Levy (IL) was published on 17 March 2023. Of particular note is that the proposed IL is conceptually different from the existing system by which developer contributions are sought in England via s106 Agreements with local authorities also optionally choosing to adopt a Community Infrastructure Levy (CIL) to raise additional funding.

1.4 The consultation published two separate documents:

- [Technical consultation on the Infrastructure Levy](#) – this is arranged over seven chapters and sets out the design, the approach to charges, collection of the levy, the delivery of infrastructure and proposed changes to the delivery of affordable housing. Comments are invited in response to 45 specific questions.
- A policy research report [Exploring the potential effects of the proposed Infrastructure Levy](#) a 303 page document published alongside the consultation, the study was undertaken to provide insight into how the Infrastructure Levy might work in practice. Working with six local authorities, illustrative and hypothetical models have been considered to inform the evolution of the proposed reforms set out within the technical consultation.

Responses are required to be submitted to the Department of Levelling Up, Housing and Communities (DLUHC) by the deadline of 9 June 2023.

1.5 The consultation covers a very wide range of technical and complex measures. This report summarises the key proposals and is accompanied, at Appendix 1, by suggested response to the individual consultation questions.

## 2.0 SCOPE AND DETAIL OF THE CONSULTATION

2.1 New development often creates a need for infrastructure and it is therefore imperative that these are planned for alongside growth and development. It is widely established that contributions from developers, which are secured by capturing a proportion of the uplift in the value of land generated by the granting of planning permission, are a key tool in mitigating the impacts of new development.

Under the current system, there are two broad routes for local authorities to secure developer contributions. Planning obligations, through Section 106 agreements, are negotiated with developers, and the Community Infrastructure Levy (CIL) is a fixed charge levied on the floorspace of a new development based on viability assessment undertaken in the creation of the charging schedule, before permission is granted or development takes place.

However, the government is concerned that planning obligations are subject to negotiation (and can be subject to subsequent renegotiation), which can be lengthy, ambiguous and can create uncertainty over the level of infrastructure and affordable housing that will be delivered. The concern is over not only whether this system is meeting arising needs but whether it is also leading to delays following the granting of planning permission.

The government believes that it should address these issues and reconsider how value is captured from new development creating what they believe will be a simpler, non-negotiable, and streamlined system that can capture more value and provide better outcomes for communities.

- 2.2** The consultation is seeking views on both the principles employed and some technical aspects of the proposed design of the Infrastructure Levy which are wide ranging and detailed. Whilst Appendix 1 sets out proposed responses to the individual questions, the following are highlighted as being areas of significant change to the current system which are of concern.

In a similar vein to the recent Planning Prospectus and NPPF consultation, the proposed Infrastructure Levy is confusingly interlinked with and/or overlaps other reforms being promoted through the LURB and will require further legislative changes and consultation.

This consultation is based on a hypothesis-based scenario test of the proposed new system. Different technical terminology is introduced, and, without further detail, it is potentially high risk to offer unqualified support. It is difficult to gain an understanding of how it will work in practice without further information as it is presented as a set of ideas for comment rather than a detailed proposal for imminent reform. These ideas are as follows:

#### Application - The Levy will be a **mandatory** charge.

Unlike the Community Infrastructure Levy, it will be mandatory for local authorities to establish and apply the charge. The Secretary of State for DLUHC will also have the powers to intervene in the preparation of National Infrastructure Levy charging schedules in certain circumstances.

#### Terminology - Route Pathways

**'Integral Infrastructure'** is the new terminology for 'site-specific infrastructure' that is integral to the successful functioning/mitigation of the impact of a development site. Integral Infrastructure would include: site access roads; sustainable urban drainage schemes; on-site or off-site play areas; cycle parking; electric vehicle charging points; carbon reduction measures; biodiversity net gain, street trees and public open space; as well as highway contributions, for example, secured under Section 278 (Highways Act 1980) or Section 38 agreements regarding the adoption of new roads. The intention is that integral infrastructure would be delivered via planning conditions or 'targeted' planning obligations to be known as **'delivery agreements'**. It is unclear how this differs from current S106 of the Town and Country Planning Act 1990 agreements, but this still suggests that there will be a role for a S106 'routeway' on certain schemes and 'delivery agreements' will take place where integral infrastructure cannot be conditioned.

**'Strategic infrastructure'** would then be delivered via the Infrastructure Levy. This levy-funded infrastructure mitigates the cumulative impact of new development on the local area. This infrastructure is to be planned and prioritised by local authorities in a new document – the **'Infrastructure Delivery Strategy'** which is covered below, this is termed **'Levy Funded Infrastructure'**.

Where infrastructure is delivered in-kind it would be subject to a '**levy backstop amount**' to ensure that any shortfall in the value of the infrastructure delivered in-kind is made up to the full Infrastructure Levy liability with cash.

### Levy Charging and '**Gross Development Value**'

The levy would be charged as a percentage of the value of the property at completion (Gross Development Value (GDV)), unlike CIL which is currently charged on a set £ per square metre basis usually on commencement of development, and based on a viability assessment undertaken as part of the creation of the charging schedule, before permission is granted or development takes place.

Levy rates would be set by Local Planning Authorities in their role as charging authorities. When setting rates, charging authorities would have to consider a number of factors, including: the housing needs; the viability of development in the area; and the need to set rates at a level that can deliver affordable housing at a level equalling or exceeding what developers deliver now in that area.

The focus on calculating the end value of development rather than floorspace increases the risk of potential changes in values due to economic cycles. For example, longer term strategic developments may take decades to complete, values may increase or decrease but it would be the Local Authority who will bear the risk of future returns for the reasons set out in the section below.

### Local Authority '**Borrowing**'

The proposal is for Local Planning Authorities to be able to borrow against future IL receipts to support the delivery of infrastructure alongside development. Legislation requires that they only borrow when they can afford to do so. In borrowing against IL proceeds, local authorities will be able to make use of the Public Works Loan Board (PWLB) facility. The normal rules for borrowing from the PWLB will apply, whereby the facility can support local authority capital spending provided that capital spending has a policy objective (in other words, is not for the purpose of generating a monetary return), and that it is within the Prudential Framework. **THE RISK** is where authorities are reliant on forecast revenue streams to afford debt if those revenue streams do not materialise or are less than forecast. Question 21 of the technical consultation, set out in Appendix 1, seeks views on borrowing against Infrastructure Levy proceeds. The consultation also seeks views on how an early payment mechanism might operate at questions 21-23, to provide local authorities with earlier access to capital. Officers are concerned that there is no guarantee of payment in full to cover the cost of potential borrowing. At present, without further details on how this would work in practice, it is difficult to not only evaluate the risk but also understand the potential implications.

### Affordable Housing - the '**Right to Require**'

On-site affordable housing would be delivered predominantly as an in-kind payment of the Levy through a new 'right to require' level set within the charging schedule instead of through S106 negotiation, on the basis of Local Plan policy. This would see a percentage of the Levy value delivered in-kind by developers as on-site affordable housing or if not on-site as an increased Levy contribution. The 'right to require', and the rest of the Levy receipts will be able to be used to secure affordable tenures such as Social Rent homes, Affordable Rent homes, Shared Ownership homes and First Homes. The amount of affordable housing that a local planning authority can secure through the 'right to require' will depend on the tenure type. It is unclear at this stage how this will be set out in policy, however there will be a role for the Local Plan to determine the level and viability of affordable housing within future site allocation policies. As an example, where there is a demonstrable need for housing of a particular tenure, a steeper discount from the market rate may be applied and the local authority should expect to secure fewer units through the right to require. The government intend the IL to be adaptable to any potential policy changes around affordable housing tenure types in the future.

## 'Infrastructure Delivery Strategy' & Charging Schedules

Local Planning Authorities would develop an Infrastructure Delivery Strategy (IDS). The IDS would be a replacement for the current Infrastructure Delivery Plan (IDP) which underpins the Local Plan, CIL charging and the current annual Infrastructure Funding Statement (IFS). Chapter 4 of the technical consultation sets out the proposed content of the IDS. The IDS will set out levy-funded infrastructure which may include: Healthcare; schools; strategic green infrastructure; sports facilities; and transport improvements, for example. The IDS would set out a '**spending plan**' which would replace elements, in particular the Infrastructure List, of the IFS. This could also go further to include information about the authority's approach to affordable housing, including the tenure mix. Question 27 of the consultation seeks views on the content of the spending plan. Like CIL the Infrastructure Levy would be required to undergo examination in public, for the evidence underpinning the rates to be adopted to be tested. Officers are of the view that this is potentially a streamlining of the current processes now in place, which is welcomed, but more guidelines are needed to set out the clear expectations by the government.

One important aspect, that remains uncertain, is that the LURB provides for the levy to be spent on non-infrastructure matters like social care and free childcare. This is a **CONCERN** given recent announcements in the Budget about expanding childcare and could divert funding away from key infrastructure.

### Transitional Arrangements

There is a proposed '**test and learn**' roll out starting in 2025 following Royal Assent of the LURB, although consideration of consultation responses, the drafting of new regulations and consultation on that draft will need to take place, there is an overall target for full roll out from 2030.

## **3.0 ASSESSMENT AND PROPOSED RESPONSE**

**3.1** Although the consultation sets out proposed changes to the way in which developer contributions would be secured, fundamentally the nature of the way in which the assessment of need, viability, and the broad approach to the collation of developer contributions would remain. Many proposals appear to be just the renaming of existing processes which are in place via S106 and CIL and there would continue to be a neighbourhood share of Levy receipts. As a result, the proposed IL should not affect the Council's broad approach to plan-making more widely.

**3.2** Nevertheless, the package of proposed measures would be significant in terms of the practical operation of an infrastructure levy and Appendix 1 sets out proposed responses to each of the 45 detailed technical consultation questions.

More fundamentally, officers have two overarching concerns with the proposals, namely that insufficient detail is provided to give confidence over how the system would work in practice, and that the local authorities would be exposed to unacceptable financial risk.

**3.3** It is therefore being recommended that the following overarching paragraphs be submitted alongside the detailed comments in Appendix 1 to form part of the consultation response:

- The consultation lacks detail and until this is provided and legislation emerges which may be assessed, it is not possible to conclude that the proposals would deliver the improvements over the current system that is suggested in the consultation; and
- The area of greatest unknown risk is the proposal for local authority borrowing against future levy receipts, shifting the risk of development return from the developer to the local authority. There is no guarantee of payment in full to

cover the cost of potential borrowing. This represents an unacceptable risk which would mean it would not be possible to deliver necessary strategic infrastructure alongside development. At present, without further detail of how this would work in practice, it is not possible to evaluate the risk(s) and understand the potential implications this would have for the council.

#### **4.0 CONSULTATION**

4.1 None.

#### **5.0 ASSOCIATED RISKS**

5.1 None.

#### **6.0 MONITORING**

6.1 The outcomes of the government's consultation will be carefully monitored and incorporated as necessary in the Council's plan-making and related functions.

#### **7.0 RELEVANT COUNCIL PLAN PRIORITIES/COUNCIL POLICIES/STRATEGIES**

7.1 Tewkesbury Borough Council Plan 2020 – 2024.  
Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031.  
Tewkesbury Borough Plan 2011 – 2031.

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**Background Papers:** None.

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**Appendices:** 1 – Draft Response to the Infrastructure Levy Technical Consultation Questions.